

# SB1307



## 97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1307

Introduced 2/8/2011, by Sen. Martin A. Sandoval

### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-310  
705 ILCS 405/5-407  
705 ILCS 405/5-710

Amends the Juvenile Court Act of 1987. Provides that the court may require the biological parents of a delinquent minor to undergo counseling.

LRB097 09773 RLC 49914 b

A BILL FOR

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Sections 5-310, 5-407, and 5-710 as follows:

6 (705 ILCS 405/5-310)

7 Sec. 5-310. Community mediation program.

8 (1) Program purpose. The purpose of community mediation is  
9 to provide a system by which minors who commit delinquent acts  
10 may be dealt with in a speedy and informal manner at the  
11 community or neighborhood level. The goal is to make the  
12 juvenile understand the seriousness of his or her actions and  
13 the effect that a crime has on the minor, his or her family,  
14 his or her victim and his or her community. In addition, this  
15 system offers a method to reduce the ever-increasing instances  
16 of delinquent acts while permitting the judicial system to deal  
17 effectively with cases that are more serious in nature.

18 (2) Community mediation panels. The State's Attorney, or an  
19 entity designated by the State's Attorney, may establish  
20 community mediation programs designed to provide citizen  
21 participation in addressing juvenile delinquency. The State's  
22 Attorney, or his or her designee, shall maintain a list of  
23 qualified persons who have agreed to serve as community

1 mediators. To the maximum extent possible, panel membership  
2 shall reflect the social-economic, racial and ethnic make-up of  
3 the community in which the panel sits. The panel shall consist  
4 of members with a diverse background in employment, education  
5 and life experience.

6 (3) Community mediation cases.

7 (a) Community mediation programs shall provide one or  
8 more community mediation panels to informally hear cases  
9 that are referred by a police officer as a station  
10 adjustment, or a probation officer as a probation  
11 adjustment, or referred by the State's Attorney as a  
12 diversion from prosecution.

13 (b) Minors who are offered the opportunity to  
14 participate in the program must admit responsibility for  
15 the offense to be eligible for the program.

16 (4) Disposition of cases. Subsequent to any hearing held,  
17 the community mediation panel may:

18 (a) Refer the minor for placement in a community-based  
19 nonresidential program.

20 (b) Refer the minor or the minor's family, including  
21 the minor's biological parents, to community counseling.

22 (c) Require the minor to perform up to 100 hours of  
23 community service.

24 (d) Require the minor to make restitution in money or  
25 in kind in a case involving property damage; however, the  
26 amount of restitution shall not exceed the amount of actual

1 damage to property.

2 (e) Require the minor and his or her parent, guardian,  
3 or legal custodian to undergo an approved screening for  
4 substance abuse or use, or both. If the screening indicates  
5 a need, a drug and alcohol assessment of the minor and his  
6 or her parent, guardian, or legal custodian shall be  
7 conducted by an entity licensed by the Department of Human  
8 Services, as a successor to the Department of Alcoholism  
9 and Substance Abuse. The minor and his or her parent,  
10 guardian, or legal custodian shall adhere to and complete  
11 all recommendations to obtain drug and alcohol treatment  
12 and counseling resulting from the assessment.

13 (f) Require the minor to attend school.

14 (g) Require the minor to attend tutorial sessions.

15 (h) Impose any other restrictions or sanctions that are  
16 designed to encourage responsible and acceptable behavior  
17 and are agreed upon by the participants of the community  
18 mediation proceedings.

19 (5) The agreement shall run no more than 6 months. All  
20 community mediation panel members and observers are required to  
21 sign the following oath of confidentiality prior to commencing  
22 community mediation proceedings:

23 "I solemnly swear or affirm that I will not  
24 divulge, either by words or signs, any information  
25 about the case which comes to my knowledge in the  
26 course of a community mediation presentation and that I

1 will keep secret all proceedings which may be held in  
2 my presence.

3 Further, I understand that if I break  
4 confidentiality by telling anyone else the names of  
5 community mediation participants, except for  
6 information pertaining to the community mediation  
7 panelists themselves, or any other specific details of  
8 the case which may identify that juvenile, I will no  
9 longer be able to serve as a community mediation panel  
10 member or observer."

11 (6) The State's Attorney shall adopt rules and procedures  
12 governing administration of the program.

13 (Source: P.A. 90-590, eff. 1-1-99.)

14 (705 ILCS 405/5-407)

15 Sec. 5-407. Processing of juvenile in possession of a  
16 firearm.

17 (a) If a law enforcement officer detains a minor pursuant  
18 to Section 10-27.1A of the School Code, the officer shall  
19 deliver the minor to the nearest juvenile officer, in the  
20 manner prescribed by subsection (2) of Section 5-405 of this  
21 Act. The juvenile officer shall deliver the minor without  
22 unnecessary delay to the court or to the place designated by  
23 rule or order of court for the reception of minors. In no event  
24 shall the minor be eligible for any other disposition by the  
25 juvenile police officer, notwithstanding the provisions of

1 subsection (3) of Section 5-405 of this Act.

2 (b) Minors not excluded from this Act's jurisdiction under  
3 subsection (3) (a) of Section 5-130 of this Act shall be brought  
4 before a judicial officer within 40 hours, exclusive of  
5 Saturdays, Sundays, and court-designated holidays, for a  
6 detention hearing to determine whether he or she shall be  
7 further held in custody. If the court finds that there is  
8 probable cause to believe that the minor is a delinquent minor  
9 by virtue of his or her violation of item (4) of subsection (a)  
10 of Section 24-1 of the Criminal Code of 1961 while on school  
11 grounds, that finding shall create a presumption that immediate  
12 and urgent necessity exists under subdivision (2) of Section  
13 5-501 of this Act. Once the presumption of immediate and urgent  
14 necessity has been raised, the burden of demonstrating the lack  
15 of immediate and urgent necessity shall be on any party that is  
16 opposing detention for the minor. Should the court order  
17 detention pursuant to this Section, the minor shall be  
18 detained, pending the results of a court-ordered psychological  
19 evaluation to determine if the minor is a risk to himself,  
20 herself, or others. Upon receipt of the psychological  
21 evaluation, the court shall review the determination regarding  
22 the existence of urgent and immediate necessity. The court  
23 shall consider the psychological evaluation in conjunction  
24 with the other factors identified in subdivision (2) of Section  
25 5-501 of this Act in order to make a de novo determination  
26 regarding whether it is a matter of immediate and urgent

1 necessity for the protection of the minor or of the person or  
2 property of another that the minor be detained or placed in a  
3 shelter care facility. In addition to the pre-trial conditions  
4 found in Section 5-505 of this Act, the court may order the  
5 minor and the minor's biological parents to receive counseling  
6 and any other services recommended by the psychological  
7 evaluation as a condition for release of the minor.

8 (c) Upon making a determination that the student presents a  
9 risk to himself, herself, or others, the court shall issue an  
10 order restraining the student from entering the property of the  
11 school if he or she has been suspended or expelled from the  
12 school as a result of possessing a firearm. The order shall  
13 restrain the student from entering the school and school owned  
14 or leased property, including any conveyance owned, leased, or  
15 contracted by the school to transport students to or from  
16 school or a school-related activity. The order shall remain in  
17 effect until such time as the court determines that the student  
18 no longer presents a risk to himself, herself, or others.

19 (d) Psychological evaluations ordered pursuant to  
20 subsection (b) of this Section and statements made by the minor  
21 during the course of these evaluations, shall not be admissible  
22 on the issue of delinquency during the course of any  
23 adjudicatory hearing held under this Act.

24 (e) In this Section:

25 "School" means any public or private elementary or  
26 secondary school.

1 "School grounds" includes the real property comprising any  
2 school, any conveyance owned, leased, or contracted by a school  
3 to transport students to or from school or a school-related  
4 activity, or any public way within 1,000 feet of the real  
5 property comprising any school.

6 (Source: P.A. 91-11, eff. 6-4-99.)

7 (705 ILCS 405/5-710)

8 Sec. 5-710. Kinds of sentencing orders.

9 (1) The following kinds of sentencing orders may be made in  
10 respect of wards of the court:

11 (a) Except as provided in Sections 5-805, 5-810, 5-815,  
12 a minor who is found guilty under Section 5-620 may be:

13 (i) put on probation or conditional discharge and  
14 released to his or her parents, guardian or legal  
15 custodian, provided, however, that any such minor who  
16 is not committed to the Department of Juvenile Justice  
17 under this subsection and who is found to be a  
18 delinquent for an offense which is first degree murder,  
19 a Class X felony, or a forcible felony shall be placed  
20 on probation;

21 (ii) placed in accordance with Section 5-740, with  
22 or without also being put on probation or conditional  
23 discharge;

24 (iii) required to undergo a substance abuse  
25 assessment conducted by a licensed provider and

1 participate in the indicated clinical level of care;

2 (iv) placed in the guardianship of the Department  
3 of Children and Family Services, but only if the  
4 delinquent minor is under 15 years of age or, pursuant  
5 to Article II of this Act, a minor for whom an  
6 independent basis of abuse, neglect, or dependency  
7 exists. An independent basis exists when the  
8 allegations or adjudication of abuse, neglect, or  
9 dependency do not arise from the same facts, incident,  
10 or circumstances which give rise to a charge or  
11 adjudication of delinquency;

12 (v) placed in detention for a period not to exceed  
13 30 days, either as the exclusive order of disposition  
14 or, where appropriate, in conjunction with any other  
15 order of disposition issued under this paragraph,  
16 provided that any such detention shall be in a juvenile  
17 detention home and the minor so detained shall be 10  
18 years of age or older. However, the 30-day limitation  
19 may be extended by further order of the court for a  
20 minor under age 15 committed to the Department of  
21 Children and Family Services if the court finds that  
22 the minor is a danger to himself or others. The minor  
23 shall be given credit on the sentencing order of  
24 detention for time spent in detention under Sections  
25 5-501, 5-601, 5-710, or 5-720 of this Article as a  
26 result of the offense for which the sentencing order

1 was imposed. The court may grant credit on a sentencing  
2 order of detention entered under a violation of  
3 probation or violation of conditional discharge under  
4 Section 5-720 of this Article for time spent in  
5 detention before the filing of the petition alleging  
6 the violation. A minor shall not be deprived of credit  
7 for time spent in detention before the filing of a  
8 violation of probation or conditional discharge  
9 alleging the same or related act or acts;

10 (vi) ordered partially or completely emancipated  
11 in accordance with the provisions of the Emancipation  
12 of Minors Act;

13 (vii) subject to having his or her driver's license  
14 or driving privileges suspended for such time as  
15 determined by the court but only until he or she  
16 attains 18 years of age;

17 (viii) put on probation or conditional discharge  
18 and placed in detention under Section 3-6039 of the  
19 Counties Code for a period not to exceed the period of  
20 incarceration permitted by law for adults found guilty  
21 of the same offense or offenses for which the minor was  
22 adjudicated delinquent, and in any event no longer than  
23 upon attainment of age 21; this subdivision (viii)  
24 notwithstanding any contrary provision of the law;

25 (ix) ordered to undergo a medical or other  
26 procedure to have a tattoo symbolizing allegiance to a

1 street gang removed from his or her body; or

2 (x) placed in electronic home detention under Part  
3 7A of this Article.

4 (b) A minor found to be guilty may be committed to the  
5 Department of Juvenile Justice under Section 5-750 if the  
6 minor is 13 years of age or older, provided that the  
7 commitment to the Department of Juvenile Justice shall be  
8 made only if a term of incarceration is permitted by law  
9 for adults found guilty of the offense for which the minor  
10 was adjudicated delinquent. The time during which a minor  
11 is in custody before being released upon the request of a  
12 parent, guardian or legal custodian shall be considered as  
13 time spent in detention.

14 (c) When a minor is found to be guilty for an offense  
15 which is a violation of the Illinois Controlled Substances  
16 Act, the Cannabis Control Act, or the Methamphetamine  
17 Control and Community Protection Act and made a ward of the  
18 court, the court may enter a disposition order requiring  
19 the minor and the minor's biological parents to undergo  
20 assessment, counseling or treatment in a substance abuse  
21 program approved by the Department of Human Services.

22 (2) Any sentencing order other than commitment to the  
23 Department of Juvenile Justice may provide for protective  
24 supervision under Section 5-725 and may include an order of  
25 protection under Section 5-730.

26 (3) Unless the sentencing order expressly so provides, it

1 does not operate to close proceedings on the pending petition,  
2 but is subject to modification until final closing and  
3 discharge of the proceedings under Section 5-750.

4 (4) In addition to any other sentence, the court may order  
5 any minor found to be delinquent to make restitution, in  
6 monetary or non-monetary form, under the terms and conditions  
7 of Section 5-5-6 of the Unified Code of Corrections, except  
8 that the "presentencing hearing" referred to in that Section  
9 shall be the sentencing hearing for purposes of this Section.  
10 The parent, guardian or legal custodian of the minor may be  
11 ordered by the court to pay some or all of the restitution on  
12 the minor's behalf, pursuant to the Parental Responsibility  
13 Law. The State's Attorney is authorized to act on behalf of any  
14 victim in seeking restitution in proceedings under this  
15 Section, up to the maximum amount allowed in Section 5 of the  
16 Parental Responsibility Law.

17 (5) Any sentencing order where the minor is committed or  
18 placed in accordance with Section 5-740 shall provide for the  
19 parents or guardian of the estate of the minor to pay to the  
20 legal custodian or guardian of the person of the minor such  
21 sums as are determined by the custodian or guardian of the  
22 person of the minor as necessary for the minor's needs. The  
23 payments may not exceed the maximum amounts provided for by  
24 Section 9.1 of the Children and Family Services Act.

25 (6) Whenever the sentencing order requires the minor to  
26 attend school or participate in a program of training, the

1 truant officer or designated school official shall regularly  
2 report to the court if the minor is a chronic or habitual  
3 truant under Section 26-2a of the School Code. Notwithstanding  
4 any other provision of this Act, in instances in which  
5 educational services are to be provided to a minor in a  
6 residential facility where the minor has been placed by the  
7 court, costs incurred in the provision of those educational  
8 services must be allocated based on the requirements of the  
9 School Code.

10 (7) In no event shall a guilty minor be committed to the  
11 Department of Juvenile Justice for a period of time in excess  
12 of that period for which an adult could be committed for the  
13 same act.

14 (8) A minor found to be guilty for reasons that include a  
15 violation of Section 21-1.3 of the Criminal Code of 1961 shall  
16 be ordered to perform community service for not less than 30  
17 and not more than 120 hours, if community service is available  
18 in the jurisdiction. The community service shall include, but  
19 need not be limited to, the cleanup and repair of the damage  
20 that was caused by the violation or similar damage to property  
21 located in the municipality or county in which the violation  
22 occurred. The order may be in addition to any other order  
23 authorized by this Section.

24 (8.5) A minor found to be guilty for reasons that include a  
25 violation of Section 3.02 or Section 3.03 of the Humane Care  
26 for Animals Act or paragraph (d) of subsection (1) of Section

1 21-1 of the Criminal Code of 1961 shall be ordered to undergo  
2 medical or psychiatric treatment rendered by a psychiatrist or  
3 psychological treatment rendered by a clinical psychologist.  
4 The order may be in addition to any other order authorized by  
5 this Section.

6 (9) In addition to any other sentencing order, the court  
7 shall order any minor found to be guilty for an act which would  
8 constitute, predatory criminal sexual assault of a child,  
9 aggravated criminal sexual assault, criminal sexual assault,  
10 aggravated criminal sexual abuse, or criminal sexual abuse if  
11 committed by an adult to undergo medical testing to determine  
12 whether the defendant has any sexually transmissible disease  
13 including a test for infection with human immunodeficiency  
14 virus (HIV) or any other identified causative agency of  
15 acquired immunodeficiency syndrome (AIDS). Any medical test  
16 shall be performed only by appropriately licensed medical  
17 practitioners and may include an analysis of any bodily fluids  
18 as well as an examination of the minor's person. Except as  
19 otherwise provided by law, the results of the test shall be  
20 kept strictly confidential by all medical personnel involved in  
21 the testing and must be personally delivered in a sealed  
22 envelope to the judge of the court in which the sentencing  
23 order was entered for the judge's inspection in camera. Acting  
24 in accordance with the best interests of the victim and the  
25 public, the judge shall have the discretion to determine to  
26 whom the results of the testing may be revealed. The court

1 shall notify the minor of the results of the test for infection  
2 with the human immunodeficiency virus (HIV). The court shall  
3 also notify the victim if requested by the victim, and if the  
4 victim is under the age of 15 and if requested by the victim's  
5 parents or legal guardian, the court shall notify the victim's  
6 parents or the legal guardian, of the results of the test for  
7 infection with the human immunodeficiency virus (HIV). The  
8 court shall provide information on the availability of HIV  
9 testing and counseling at the Department of Public Health  
10 facilities to all parties to whom the results of the testing  
11 are revealed. The court shall order that the cost of any test  
12 shall be paid by the county and may be taxed as costs against  
13 the minor.

14 (10) When a court finds a minor to be guilty the court  
15 shall, before entering a sentencing order under this Section,  
16 make a finding whether the offense committed either: (a) was  
17 related to or in furtherance of the criminal activities of an  
18 organized gang or was motivated by the minor's membership in or  
19 allegiance to an organized gang, or (b) involved a violation of  
20 subsection (a) of Section 12-7.1 of the Criminal Code of 1961,  
21 a violation of any Section of Article 24 of the Criminal Code  
22 of 1961, or a violation of any statute that involved the  
23 wrongful use of a firearm. If the court determines the question  
24 in the affirmative, and the court does not commit the minor to  
25 the Department of Juvenile Justice, the court shall order the  
26 minor to perform community service for not less than 30 hours

1 nor more than 120 hours, provided that community service is  
2 available in the jurisdiction and is funded and approved by the  
3 county board of the county where the offense was committed. The  
4 community service shall include, but need not be limited to,  
5 the cleanup and repair of any damage caused by a violation of  
6 Section 21-1.3 of the Criminal Code of 1961 and similar damage  
7 to property located in the municipality or county in which the  
8 violation occurred. When possible and reasonable, the  
9 community service shall be performed in the minor's  
10 neighborhood. This order shall be in addition to any other  
11 order authorized by this Section except for an order to place  
12 the minor in the custody of the Department of Juvenile Justice.  
13 For the purposes of this Section, "organized gang" has the  
14 meaning ascribed to it in Section 10 of the Illinois Streetgang  
15 Terrorism Omnibus Prevention Act.

16 (11) If the court determines that the offense was committed  
17 in furtherance of the criminal activities of an organized gang,  
18 as provided in subsection (10), and that the offense involved  
19 the operation or use of a motor vehicle or the use of a  
20 driver's license or permit, the court shall notify the  
21 Secretary of State of that determination and of the period for  
22 which the minor shall be denied driving privileges. If, at the  
23 time of the determination, the minor does not hold a driver's  
24 license or permit, the court shall provide that the minor shall  
25 not be issued a driver's license or permit until his or her  
26 18th birthday. If the minor holds a driver's license or permit

1 at the time of the determination, the court shall provide that  
2 the minor's driver's license or permit shall be revoked until  
3 his or her 21st birthday, or until a later date or occurrence  
4 determined by the court. If the minor holds a driver's license  
5 at the time of the determination, the court may direct the  
6 Secretary of State to issue the minor a judicial driving  
7 permit, also known as a JDP. The JDP shall be subject to the  
8 same terms as a JDP issued under Section 6-206.1 of the  
9 Illinois Vehicle Code, except that the court may direct that  
10 the JDP be effective immediately.

11 (12) If a minor is found to be guilty of a violation of  
12 subsection (a-7) of Section 1 of the Prevention of Tobacco Use  
13 by Minors Act, the court may, in its discretion, and upon  
14 recommendation by the State's Attorney, order that minor and  
15 his or her parents or legal guardian to attend a smoker's  
16 education or youth diversion program as defined in that Act if  
17 that program is available in the jurisdiction where the  
18 offender resides. Attendance at a smoker's education or youth  
19 diversion program shall be time-credited against any community  
20 service time imposed for any first violation of subsection  
21 (a-7) of Section 1 of that Act. In addition to any other  
22 penalty that the court may impose for a violation of subsection  
23 (a-7) of Section 1 of that Act, the court, upon request by the  
24 State's Attorney, may in its discretion require the offender to  
25 remit a fee for his or her attendance at a smoker's education  
26 or youth diversion program.

1 For purposes of this Section, "smoker's education program"  
2 or "youth diversion program" includes, but is not limited to, a  
3 seminar designed to educate a person on the physical and  
4 psychological effects of smoking tobacco products and the  
5 health consequences of smoking tobacco products that can be  
6 conducted with a locality's youth diversion program.

7 In addition to any other penalty that the court may impose  
8 under this subsection (12):

9 (a) If a minor violates subsection (a-7) of Section 1  
10 of the Prevention of Tobacco Use by Minors Act, the court  
11 may impose a sentence of 15 hours of community service or a  
12 fine of \$25 for a first violation.

13 (b) A second violation by a minor of subsection (a-7)  
14 of Section 1 of that Act that occurs within 12 months after  
15 the first violation is punishable by a fine of \$50 and 25  
16 hours of community service.

17 (c) A third or subsequent violation by a minor of  
18 subsection (a-7) of Section 1 of that Act that occurs  
19 within 12 months after the first violation is punishable by  
20 a \$100 fine and 30 hours of community service.

21 (d) Any second or subsequent violation not within the  
22 12-month time period after the first violation is  
23 punishable as provided for a first violation.

24 (Source: P.A. 95-337, eff. 6-1-08; 95-642, eff. 6-1-08; 95-844,  
25 eff. 8-15-08; 95-876, eff. 8-21-08; 96-179, eff. 8-10-09;  
26 96-293, eff. 1-1-10; 96-1000, eff. 7-2-10.)